IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

SUIT NO. 15 OF 2004

Cyrus Kersie Vandrevala,
Parsi Indian Inhabitant, 31,
Years, Indian, at present
residing at 1017,
Newton Road, Devon,
Pennsylvania 19333, U.S.A. ... Plaintiff No.1.

And

Kareena C. Vandrevala,
Parsi Indian Inhabitant,
Residing at Wadia Building,
1st Floor, 6, Babulnath Road,
Mumbai 400 007. ... Plaintiff No. 2.

Mrs. Anita Agarwal with Mrs. Mrunali Deshmukh
i/by Mr.N.B. Suvarna & Co. for Pltff No. 1.

Mr. B.V. Bhaskar i/by Bhaskar & Co. for Pltff No. 2.

Plaintiff Nos. 1 and 2 present in court.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 18, 2004

ORAL JUDGMENT

1. A query was raised by the court to the learned counsel appearing for the parties as to whether the court would have jurisdiction to accept the consent terms without assistance or complying with the requirements of Section 19 of Parsi Marriage and Divorce Act, 1946.

2. Under Section 19 it is provided that if the Chief Justice of the High Court or such other Judge of the same court as the Chief Justice from time to time appoint, to be the Judge of such Matrimonial Court, in the trial of cases under this Act, shall be aided by five delegates except the matters

excluded therein. In Part IV of the Act, Section 32 provides for the grounds on which person may sue for divorce. It will thus be clear that in a trial of a suit under Section 32, provisions of Section 19 would be attracted and one of the important requirement is that the court during the trial of the cases shall be aided by five delegates.

. Section 32(B) was introduced by Mah. Act 5 of 1988 with effect from 18.4.1988. This section enables filing of a suit by a married couples on the ground that they have been living separately for a period of one year or more, and that they have mutually agreed that the marriage should be dissolved. There is a proviso which need not be adverted to. Sub Section (2) sets out that the court shall on being satisfied after hearing the parties and after making such enquiry as it thinks fit, that a marriage had been solemnized under the Act and that the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

3. A reading of this section would show that in a suit filed for divorce by mutual consent, there is no need of trial. All that sub section (2) requires is that an enquiry be made by the court that the requirements under Section 32(C)(1) are

satisfied. One important aspect that the court will have to consider is whether the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud. The enquiry therefore, is limited to this aspect of the matter. There is no specific need for oral evidence to decide these issues which may arise. The power therefore, is exclusively of the court and it is not necessary for the court to resort to the procedure under Section 19 to have assistance of five delegates.

. On behalf of the parties, learned counsel has also drawn my attention to Section 19(d) of the Act to point out that in the matters such as divorce by mutual consent there is no need of five delegates. In my opinion, it is not necessary to go into that aspect though it is possible to take such a view, considering the clear terminology used in Section 32(B). Section 32(B) has been introduced so as to remove the rigour which otherwise was required for a trial. It is no doubt true that Section 32(B) is in Part IV. All other sections in that part will require consideration of evidence considering the issues involved. In the matter of Section 32(B), it is the parties who seeks divorce by mutual consent. Hence, there are no issues to be tried in the suit. All that the court must be satisfied is that the marriage was solemnized under the Act and that consent of either party to the suit was not

obtained by force or fraud. This is the nature of enquiry to satisfy itself. The conferment of the power on the court and its satisfaction as required in Sub Section (2) seems to be a conscious attempt by the Legislature to empower to the court to consider the petition without having to follow procedural requirements of Section 19 as parties themselves have approached the court that their marriage cannot subsist. In my opinion, therefore, when the petition is presented under Section 32(B), Section 19 would not come into play and it will be for the court alone to decide after hearing the parties and after making such enquiry as it thinks fit to grant relief or reject the relief.

4. In the instant case, there are consent terms filed by both the parties who are present before this court. They admit their signatures on the consent terms. On specific queries from the court, they have agreed that they have signed the terms knowing fully well the terms in the consent terms and that no fraud or pressure was brought upon them to enter into the consent terms.

5. Considering the above, in my opinion, the suit will have to be decreed in terms of Prayer Clauses (a) and (b). Suit accordingly decreed in terms of Prayer Clauses (a) and (b).

(F.I. REBELLO,J.)